GURCHARAN SINGH BACHITTAR SINGH @ GURU

v.

PENGUASA, TEMPAT TAHANAN PERLINDUNGAN KAMUNTING, TAIPING & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
DATO' JAMES FOONG J
[CIVIL SUIT NO: S5-21-150-1994]
25 SEPTEMBER 1996

ADMINISTRATIVE LAW: *Preventive detention - Plaintiff detained under s. 8(1) Internal Security Act 1960 - Detention extended by order under s. 8(7) ISA - Second order not specifying grounds for extended detention - Whether plaintiff deprived of right to make representations to Advisory Board under 11(1) & (2) ISA - Cancellation of initial and extended detention orders - Plaintiff released - Whether second detention order invalid - Whether plaintiff entitled to claim damages for false imprisonment.*

ADMINISTRATIVE LAW: *Preventive detention - Detention extended - No grounds specified in second detention order - Whether necessary for the Minister of Home Affairs or his deputy to furnish grounds on which order is based - Cancellation of initial detention order - Effect thereof - Whether defence of justification, statutory protection and bona fides applicable - Section 149(1)(f) Federal Constitution and s. 8(B) & (C) Internal Security Act 1960.*

INTERPRETATION: *Laws on preventive detention - Restriction of personal liberty - Necessity for strict interpretation - Fundamental rights of an individual - Article 5(1) Federal Constitution.*

DAMAGES: *False imprisonment - Claim for loss of earnings - Whether suffuciently proved - Whether plaintiff entitled to aggravated and general damages - Principles applicable.*

The plaintiff was detained for two years pursuant to a detention order for allegedly selling information on the country's security defences to a foreign country. On 31 October 1991, the Deputy Minister of Home Affairs (the Deputy Minister) issued another detention order pursuant to s. 8(7) of the Internal Security Act 1960 (ISA) extending the plaintiff's detention for another two years. Unlike the first detention order, the second order failed to state the grounds for the extension. Then on 2 February 1993, the Deputy Minister ordered the cancellation of both the initial and extension orders with effect from 5 February 1993 and the plaintiff was released.

The plaintiff filed a claim for a declaration that the extended detention order was invalid, and for damages and costs for false imprisonment within the extended period on the basis that no grounds for his detention were stated in the order which deprived him of his right to make representation to the Advisory Board under s. 8(7) of the ISA read together with s. 11(1) & (2) of the ISA. The plaintiff, who was a trained aircraft technician with the Royal Malaysian Air Force (RMAF), stated that he was earning a salary of RM1,103 and was dismissed while he was under custody prior to the initial detention order. This he said, deprived him of an opportunity to defend his dismissal from the RMAF and he claimed for loss of earning and general damages for the period of his confinement. Plaintiff's Counsel submitted that though the plaintiff did not suffer any physical injury during the confinement, aggravated damages should also be awarded to the plaintiff.

Defendants' Counsel argued that if the grounds of detention for the extension order are similar to that of the initial detention order, there was no necessity for the Minister to expressly state his grounds in the extension order. He also said that the honourable Deputy Minister acted without *mala fides* in extending the plaintiff's period of detention and the situation was rectified by the cancellation order issued by the Minister which cancelled both the initial and extension orders. Learned Counsel raised two statutory defences. Firstly, Article 149(1)(f) of the Federal Constitution which states that any acts of Parliament inconsistent with Articles 5, 9, 10 or 13 would, apart from these Articles be outside the legislative power of Parliament, be valid if it involves acts or threats that prejudice public order or the security of the country. Secondly, ss. 8(B) and (C) of the ISA. Section 8(B) states, "There shall be no judicial review in any Court of, ... any act done or decision made by ... the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on the compliance with any procedural requirement in this Act governing such act or decision." Counsel submitted that it is by s. 8(C), which provides the interpretation of 'judicial review', that the plaintiff is prevented from bringing this action as by this section the Courts are restricted to only examining whether there had been due compliance with procedure as laid down under the ISA.

The main issue was whether there was a necessity for the Minister of Home Affairs or his deputy to furnish the grounds and the allegations of fact on which the extension order was based.

Held:

[1] Detention orders result in the restriction of the free movement of an individual which is guaranteed under Article 5(1) of the Federal Constitution. For this, the principle of strict interpretation must be adopted by the Courts on all laws promulgated effecting the detention of a person, and in the event of doubt, the interpretation should even lean in favour of the subject.

[2] A detainee must be made aware of whether he can exercise his rights to make representation. Before he can do so, it must be disclosed to him on what grounds he is further detained. Only if he is further detained on different grounds or partly on different grounds is a right granted to him to make representations to the Advisory Board. Therefore, to enable him to decide, the extension order must list the grounds, whether it is the same, different or partly different. In the circumstances, the extension is therefore invalid rendering any detention of the plaintiff thereunder unlawful.

[3] The cancellation order has rendered it ineffective towards the plaintiff's continual detention under the extension order but, it cannot eradicate the very fact that the plaintiff was physically detained under an unlawful extension order for a substantial period. A cancellation order cannot, by a stroke of a pen erase a wrong that had been inflicted upon an individual's liberty; it does not extinguish a detention that had transpired. This detention, not being in accordance with the law is therefore unlawful and the plaintiff is entitled to claim from those responsible for his detention.

[4] The defences available to the defendants are justification and/or those provided by statute. As for justification, this Court can find none since it has ruled that the extension order is invalid culminating in the plaintiff's detention being unlawful. As regards statutory defences, the plaintiff did not challenge his detention under the initial detention order. His grievance is towards the defendants for not complying with the provisions as laid down under the ISA itself. This has nothing to do with Article 149(1)(f) of the Federal Constitution or s. 8(B) of the ISA. The detention of the plaintiff is valid under the ISA but, only if it is exercised or done within the ambit of the Act and not otherwise. In this case, since the provisions of the ISA have not been complied with, the continual detention of the plaintiff on the extended period remains unlawful.

[5] Even if the honourable Deputy Minister has acted *bona fide* but was wrong in procedure, it is still no defence to a claim for wrongful detention. A wrong is a wrong and *mens rea* is not a factor to be considered in such a situation. Possibly this could be considered as a mitigating factor in the issue relating to quantum.

[6] As there are no creditable defences raised by the defendants, this Court hereby finds the plaintiff was falsely imprisoned from 31 October 1991 to 5 February 1993 and allows the plaintiff's claim for a declaration that the extended detention order is null and void.

[7] There is no evidence to indicate that it was the defendant's acts that resulted in the plaintiff's loss of his previous employment. As the plaintiff has admitted, he was already dismissed from the RMAF before his

detention. Thus at the time of his detention by the defendants he was unemployed. Being unemployed before his detention, there is no evidence to prove that he has suffered any specific pecuniary loss in salary resulting from his detention.

[8] The plaintiff's claim for loss of earnings should not be directed at the defendants. He should make his claim against the authority or authorities that brought him into custody and restricted his movements at that material time. There is no evidence that the defendants were the ones who were responsible for detaining him prior to the initial detention order. Even if it is based on the initial detention order, the plaintiff has no ground of succeeding because this initial order is not unlawful. Under special damages therefore, this Court makes no award due to the plaintiff's failure to plead for the same as well as on lack of justification.

[9] Though aggravated damages may be awarded to compensate the plaintiff's injured feelings arising from the defendants' tortious act, there must be justification that it was heightened by the manner or motive of the defendants in doing it. In assessing whether to grant such an award the circumstances of the case must be taken into account, and one crucial factor is the character of the plaintiff. From the facts, there was no *mala fide* on the part of the honourable Deputy Minister in issuing the unlawful extension order. Immediately upon realising this error, the extension order was cancelled and the plaintiff released henceforth. Under these circumstances, surely the injured feelings of the plaintiff could not be said to have been heightened by such *bona fide* deeds of the defendants. Further, the plaintiff's character is also questionable. He was alleged to have traded the nation's security defences to another country for self gratification. Such treasonable acts certainly do not warrant any award of aggravated damages.

[10] False imprisonment is actionable *per se*; no actual damage need be proved. In deciding the quantum for this, the entire facts of this case must be considered. There was no malice on the part of the 2nd defendant in executing the extension order and the error in the detention order, at most was caused by an oversight. Consider this against the grounds for the plaintiff's detention in the initial order. His activities were certainly against national interest and he could have been charged for treason where the penalty is death. Because of an error in procedure he was set free much earlier than he would have been. Yet he chose to turn against the Government claiming damages for a technical error. Such action is deplorable, and to display its utmost displeasure and revulsion towards the plaintiff's claim, this Court hereby awards a sum of RM1 as nominal damages to the plaintiff with no order as to costs and interest as claimed.

[Claim allowed; extension order declared null and void; nominal damages of RM1 with no order as to costs and interest]

Cases referred to:

Mohd Amin bin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor. [1995] 1 CLJ 94 ***(foll)***

Tan Hoong Seng v. Minister of Home Affairs, Malaysia & Anor. [1990] 1 MLJ 171 ***(foll)***

Rudul Sah v. State of Bihar AIR 1983 1086 SC ***(cit)***

Bhim Singh v. State of J & K AIR 1986 SC 494 ***(cit)***

Re Tan Boon Liat @ Allen & Anor. [1977] 2 MLJ 108 ***(refd)***

E. Gopal & Anor. v. Awang bin Mona [1978] 2 MLJ 251 ***(refd)***

Zainuddin v. Liew Pak Fun & Anor. [1962] 28 MLJ 247 ***(cit)***

Broome v. Cassell & Co. [1972] AC 1027 ***(refd)***

Ansell v. Thomas [1974] Crim. LR 31 ***(cit)***

Legislation referred to:

Federal Constitution Arts. 5, 9, 10, 13, 149

Internal Security Act 1960, ss. 8(1), (B), (C), 8(7), 11(2), 81(3)

For the plaintiff - Karpal Singh; M/s. Karpal Singh & Co.

For the defendants - Al-Baishah Hj. Abdul Manan (Senior Federal Counsel)

JUDGMENT

James Foong J:

The plaintiff was detained under Internal Security Act 1960 (ISA) for a period of two years commencing from the 3 November 1987 in pursuant to a detention order issued by the Minister of Home Affairs of Malaysia dated the 3 November 1987 ('the initial detention order'). In this initial detention order, the reasons for his detention were stated therein. On the 31 October 1991 the Deputy Minister of Home Affairs in pursuant to the powers granted to him under s. 8(7) of the ISA, by a written order ('the extension order') extended the plaintiff's detention for another two years commencing on the 3 November 1991. This extension order listed no grounds for the plaintiff's extended detention. Then on the 2 February 1993, the Deputy Minister of Home Affairs by powers conferred upon him under s. 81(3) of the ISA ordered that the initial detention order and the extended order be cancelled with effect from the 5 February 1993 (this order of cancellation shall be referred to as the cancellation order). Thereupon the plaintiff was released.

The plaintiff now alleges that he was unlawfully detained by the extension order as this order is invalid since it gives no ground for his detention. By supplying no ground for his detention he was deprived of his rights to make representation to the Advisory Board under s. 8(7) to be read together with s. 11 of the ISA. The extension order being invalid, the plaintiff charges that he was falsely imprisoned from the 31 October 1991 till the 5 February 1993, the date of his release. For this he claims damages and costs.

The 1st defendant is in charge of the detention centre which detained the plaintiff, while the 2nd defendant is the Deputy Minister of Home Affairs, Malaysia who executed the above stated orders relating to the plaintiff's detention and subsequent release. The 3rd defendant is the Government of Malaysia whom the plaintiff claims is vicariously liable for the actions of the 1st and 2nd defendants.

The defendants' defence begins by firstly arguing that since the initial detention order was cancelled by the cancellation order, there is no extension order then existing for the plaintiff to base his claim. Secondly, they plead that the 1st and 2nd defendants' actions were *bona fide* and the plaintiff's detention was in accordance with the law. Finally, in the alternative, the defendants assert that the plaintiff's claim is wrong in law.

To begin with, s. 8(1) of the ISA allows the Minister of Home Affairs to detain any person "with a view to prevent him from acting in any manner prejudice to the security of Malaysia or any part thereof or to the maintenance of essential services therein or the economic life thereof."

Under s. 8(7) of the ISA, the period of detention any person may be extended for a further period not exceeding two years, either:

(a) on the same grounds as those on which the order was originally made;

(b) on grounds different from those on which the order was originally made; or

(c) partly on the same grounds and partly on different grounds;

However there is a proviso to s. 8(7) of the ISA which states that:

> If a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under s. 11 as if the order extended as aforesaid was a fresh order, ...

Section 11(1) of the ISA provides a detained person with the right to make representation against the detention to an Advisory Board. Under s. 11(2) of the ISA, "For the purpose of enabling a person to make representations under subsection (1) he shall, at any time of the service on him of the order:

(a) be informed of his rights to make representations to an Advisory Board under subsection (1); and

(b) be furnished by the Minister with a statement in writing –

(i) of the grounds on which the order is made;

(ii) of the allegations of fact on which the order is based; and

(iii) of such other particulars, if any, as he may in the opinion of the Minister reasonably require in order to make his representations against the order to the Advisory Board.

From these provisions, one can immediately identify the first issue in this case to be that of whether there is a necessity for the Minister of Home Affairs or his deputy, to furnish the grounds and the allegations of fact on which the extension order is based.

A number of authorities of the High Court of Malaya has decided on this issue and have given admirable grounds in their decisions which this Court wishes to associate.

The first is the case of *Mohd Amin bin Mohd Yusoh v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor*. [1995] 1 CLJ 94 where the extension order contains no ground. In granting liberty to the detainee on a writ of *habeas corpus*, the learned Judge has this to say:

> The defendant (detainee) must know the grounds of his detention so that he could decide whether he should exercise his inherent right under s. 11 of the ISA by treating the second detention order as a fresh order and consequently make representation to the Advisory Board as envisaged under s. 12(1) of the ISA.

The learned Judge then proceeded to add that:

> Furthermore, the right of making representations to the Advisory Board would be rendered meaningless if the applicant was in no position to know the grounds on which the second detention order was made.

These sentiments are shared by another learned High Court Judge in a series of *habeas corpus* applications, the first of which bears Criminal Application No. 44-22-94, High Court at Penang. Similar situation existed here where the extension orders bear no grounds. T. Selventhiranathan J has this to add:

> before the applicant can even consider whether he should make any representation to the Advisory Board in exercise of his rights under the proviso to s. 8(7) and under s. 11 (ISA), he has first to know what grounds the extension order was made. In the circumstances where he is not furnished with the statement of the grounds on which the extension order is made and of the alleged fact on which the extension order is based, it would render nugatory the rights specifically conferred upon him by those provisions of the ISA and, in my view, it would also amount to a breach of clause (1) of Article 151 of the constitution (Federal) which enjoins the determining authority to inform the detainee of the grounds for his detention and the allegation of the fact that on which of the detention order is based, and further gives him the right to make representation against the detention order to the advisory board.

Detention orders result in the restriction of the free movement of an individual which is guaranteed under Article 5(1) of the Federal Constitution. For this, the principle of strict interpretation must be adopted by the Courts on all laws promulgated effecting the detention of a person, and in the event of doubt, the interpretation should even lean in favour of the subject – see the case of *Tan Hoong Seng v. Minister of Home Affairs, Malaysia & Anor.* [1990] 1 MLJ 171. In this case, though the proviso under s. 8(7) of the ISA only mentioned, "if the detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights to under s. 11," to make representation to the Advisory Board, it is only logical and reasonable to conclude that the Minister must state his grounds in all extension orders. This is to enable the subject to decide on whether he wishes to exercise his rights to make representation to the Advisory Board. When there is silence on the grounds of an extension order, as in this case, how could the detainee be in possesion of knowledge whether to exercise his right. This tantamounts to a deprivation of his right as granted by the law. When this occurs any extension orders without disclosure of grounds becomes invalid and the detention thereunder will be unlawful.

Learned Federal Counsel for the defendants has argued that if the grounds of detention for the extension order are similar to that of the initial detention order, there is no necessity for the Minister to expressly state his grounds in the extension order. This contention finds no acceptance from this Court. Applying the principle as stated above, a detainee must be made aware of whether he can exercise his rights to make representation. Before he can do so, it must be disclosed to him on what grounds he is further detained. Only if he is further detained on different grounds or partly on different grounds a right is granted to him to make representations to the Advisory Board. Therefore, to enable him to decide, the extension order must list the grounds, whether it is the same, different or partly different.

In this case, as admitted by the defendants, the extension order states no grounds. Under such circumstances the extension is therefore invalid rendering any detention of the plaintiff thereunder unlawful.

The learned Federal Counsel then submits that the situation is rectified by the cancellation order issued by the Minister which cancelled both the initial detention order and the extension order. Though such action did secure the earlier release of the plaintiff from detention on the stated further two years in extension order but, this does not delete a fact that the extension order was unlawful. The cancellation order has rendered it ineffective towards the plaintiff's continual detention under extension order but, it cannot eradicate the very fact that the plaintiff was physically detained under an unlawful extension order for a substantial period. A cancellation order cannot, by a stroke of a pen erase a wrong that had been inflicted upon individual's liberty; it does not extinguish a detention that had transpired.

Where a detention order is issued not in accordance with the law, it is defective and bad. In normal circumstances, the detainee is at liberty to be set free. However, in tort he can claim damages for false imprisonment. This, the plaintiff is pursuing for the period of the effective date stated in his extension order till the date of his release i.e. from 3 November 1991 till the 5 February 1993.

Under common law, false imprisonment is a recognised cause of action which gives a person who was falsely imprisoned a substantive right to make a claim against another who was responsible for unlawfully detaining him. It derives from the law of trespass to a person where it is actionable without proof of actual damage – see Clerk & Lindsell on *Tort* 14th Edition at page 363.

False imprisonment has been defined as follows:

> "intentionally but without lawful justification subject another to total restrain of movement either by actively causing his confinement or preventing him from exercising his privilege of leaving the place where he is" – see Clayton & Tomlinson – *Civil Action Against the Police* 2nd Edition at page 140.

From the facts of this case, there can be no denial that the plaintiff was confined to a detention camp where his freedom of movement was restrained by the defendants. This detention, not being in accordance with the law is therefore unlawful, and the plaintiff is entitled to claim from those responsible for his detention. This principle has also found acceptance in the Indian Supreme Courts by the obiters expressed in *Rudul Sah v. State of Bihar* AIR 1983 1086 SC & *Bhim Singh v. State of J & K* AIR 1986 SC 494.

The persons responsible for the plaintiff's false imprisonment are the 1st and 2nd defendants who are or were at all material times servants and/or agents of the 3rd defendants. In an action of this nature, the defences available to the defendants are usually those of justification and/or those provided by statutory protection. As for justification, this Court can find none since it has ruled that the extension order is invalid culminating to the plaintiff's detention being unlawful. As stated by Lee Hun Hoe CJ (Borneo) in *Re Tan Boon Liat @ Allen & Anor*. [1977] 2 MLJ 108 @ 110, "However distasteful and undesirable the character of the detainee may be, it is still the duty of the Court to construe the law according to the accepted principles of interpretation."

As regards to statutory defences, the learned Federal Counsel in her subsequent additional written submission brought forth 2 defences under this category. The first relates to Article 149(1) of the Federal Constitution which provides:

> if an Act of Parliament recites that action has been taken or threatened by any substantial body of person, whether inside or outside the Federation:

(f) which is prejudice to public order in, or the security of, the federation or any part thereof,

any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall apply to a Bill of such an Act or any amendment to such a Bill.

Article 5, 9, 10 and 13 deal with liberty of person, prohibition of banishment, freedom of movement, freedom of speech, assembly and association and right to property respectively.

Going by what the Federal Counsel is submitting, the plaintiff's claim for damages which involves his personal liberty and freedom of movement as guaranteed in Article 5 and 9 of the Federal Constitution is not maintainable since his actions were prejudicial to public order and the security of the country. At this stage, for a better understanding of this case, it is necessary to disclose the grounds for the detention of the plaintiff under the initial detention order. He was accused of trading and receiving gratification therefrom on military secrets relating to our air defences to a neighbouring country.

Under Article 149(1)(f) of the Federal Constitution, any acts of Parliament which could be inconsistent with Article 5, 9, 10 or 13 would, apart from these Articles be outside the legislative power of Parliament be valid if it involves acts or threats that prejudice public order or the security of the country. The Act of Parliament which has relevance to this case is obviously the ISA. Though the provisions of the ISA are inconsistent with Article 5 and 9 of the Federal Constitution, by virtue of Article 149(1)(f) of the Federal Constitution, this piece of legislature is still valid. However, in this case no one is questioning the validity of the ISA. The plaintiff did not challenge his detention under the initial detention order though it affected his rights guaranteed under Article 5 and 9 of the Federal Constitution. His grievance is towards the defendants for not complying with the provisions as laid down under the ISA itself. This has nothing to do with Article 149(1)(f) of the Federal Constitution. The creation of ISA is valid though its provisions are inconsistent with other sections of the law affecting liberty and freedom of movement, but in this case, the provisions within the ISA itself have not been adhered to by the defendants. The detention of the plaintiff is valid under the ISA but, only if it is exercised or done within the ambit of the Act and not otherwise. In this case, since the provisions of the ISA have not been complied with, the continual detention of the plaintiff on the extended period remains unlawful.

The second statutory defence submited relies on s. 8(B) and (C) of the ISA. For the sake of clarity, this Court hereby reproduces these provisions:

Section 8(B) reads as follows:

Detention order not to be invalid or inoperative on certain grounds

(1) There shall be no judicial review in any Court of, and no Court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on the compliance with any procedural requirement in this Act governing such act or decision.

(2) The exception in regard to any question on compliance with any procedural requirement in subsection (1) shall not apply where the grounds are described in s. 8A.

Section 8C of the ISA reads as follows:

Interpretation of judicial review

In this Act, "judicial review includes proceedings instituted by way of:

(a) an application for a declaration of the prerogative orders of *mandamus*, prohibition and *certiorari*;

(b) an application for a declaration or an injunction;

(c) a writ of *habeas corpus*; and

(d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di Pertuan Agong or the Minister in accordance with this Act.

It is s. 8(C) of the ISA that the learned Federal Counsel stresses that the defendants are prevented from bringing this action. This section as the heading indicates is only an interpretation provision on the phrase "judicial review". This phrase is used in s. 8B of the ISA to prevent the Courts from scrutinising by way of judicial review, the decision of his Majesty, the Yang Di Pertuan Agong or the Minister in the exercise of their discretionary power under this Act except, "in regard to any question on the compliance with any procedural requirement in this Act governing such act or decision." By virtue of this clause, the Courts are restricted to only examine whether the procedure as laid down under this Act is complied with by the authorities. Other than this, s. 8(d) of the ISA disallows any suit, action, or other legal proceedings to be entertained by the Courts.

As one can observe throughout this entire case, the allegations of the plaintiff and the finding of this Court are based on the relevant procedures of the ISA not being complied with by the honourable Deputy Minister in issuing the extension order. It has not enquired into the exercise of the discretionary power of the Deputy Minister in making his decision, nor the reasonableness of the decision. All that this Court did was to ensure that the procedures as set out

under the ISA were adhered to, which unfortunately was not. As the plaintiff's claim is based on the non compliance of procedure, s. 8B of the ISA offers no statutory defence to the defendants.

In a final attempt, the learned Federal Counsel submits that the honourable Deputy Minister acted without *mala fide* in extending the period of detention on the plaintiff. This she relied on the case of *E. Gopal & Anor v. Awang bin Mona* [1978] 2 MLJ 251, and quoted a passage from this judgment which indicates that the Minister in such cases must exercise his powers in a *bona fide* manner. Indeed, in cases where Parliament has granted powers to any authority to exercise its discretion in arriving at a decision, such discretion must be exercised with *bona fide*, otherwise it can be declared as unlawful. In this instance however, even if the honourable Deputy Minister has acted *bona fide* but is wrong in procedure, it is still no defence to a claim for wrongful detention. A wrong is a wrong and *Mens Rea* is not a factor to be considered in such a situation. Possibility, this could be considered as a mitigating factor in the issue relating to quantum.

As there are no creditable defences raised by the defendants, this Court hereby finds the plaintiff was falsely imprisoned from the 31 October 1991 to the 5 February 1993 and allows the plaintiff's claim in prayer 1 of his statement of claim for a declaration that the extended detention order is null and void.

On the issue of damages, the plaintiff claims as follows:

> Damages for false imprisonment at the Kamunting Detention Centre, Taiping from 31 October 1991 till 5 February 1993.

In his testimony before this Court, the plaintiff states that he was a trained aircraft technician attached to the Royal Malaysian Air Force (RMAF) earning a sum of RM1,103. He was however dismissed from the RMAF before he was detained under the initial detention order. Subsequent to his release from detention on the 5 February 1993, he was engaged as an odd-job worker until 1½ years later when he secured his present permanent employment with an initial salary of RM2,500. This testimony is obviously tendered with the view of claiming for loss of earnings during the period of his unlawful confinement. Such a claim, being special damages, must be specifically proved – see the case of *Zainuddin v. Liew Pak Fun & Anor*. [1962] 28 MLJ 247.

In this case however, there is no evidence to indicate that it was the defendants' acts that resulted in the plaintiff's loss of his previous employment. As the plaintiff himself has admitted, he was already dismissed from the RMAF before his detention. Thus at the time of his detention by the defendants he was unemployed. Being unemployed before his detention, there is no evidence to prove that he has suffered any specific pecuniary loss in salary resulting from his detention.

The plaintiff then attempts to explain that he was dismissed while he was under custody prior to the initial detention order. This deprived him of an opportunity to defend his dismissal from the RMAF. In such a situation, more so the plaintiff's claim for loss of earnings should not be directed at the defendants. He should make his claim against the authority or authorities that brought him into custody and restrict his movements at that material time. There is no evidence to implicate the defendants were the ones who were responsible for detaining him prior to the initial detention order. Even if it is based on the initial detention order, the plaintiff has no ground of succeeding because this initial order is not unlawful.

Under special damages therefore, this Court makes no award due to the plaintiff's failure to plead for the same as well as on lack of justification.

Though the plaintiff suffered no physical injury during the period of false imprisonment, Encik Karpal Singh however submits that aggravated damages should be awarded to the plaintiff. Aggravated damages is defined by Lord Diplock in *Broome v. Cassell & Co.* [1972] AC 1027 @ 1124 as follows:

> Compensation for the injured feelings of the plaintiff where his sense of injury resulting from the wrongful physical act is justifiably heightened by the manner in which or motive for which the defendant did it.

Though this may be awarded to compensate the plaintiff's injured feelings arising out of the defendants' tortious act but, there must be justification that it was heightened by the manner or motive of the defendants in doing it. In assessing whether to grant such an award, all circumstances of the case must be taken into account, and one crucial factor is the character of the plaintiff – see the case of *Ansell v. Thomas* [1974] Crim. LR 31.

Judging from the facts of this case, there is no *mala fide* on the part of the honourable Deputy Minister in issuing the unlawful extension detention order. The only error that caused its invalidation may be an oversight on the part of the honourable Deputy Minister. Immediately, upon realising of this error, the extension detention order was cancelled and the plaintiff released henceforth. Under these circumstances, surely the injured feelings of the plaintiff could not be said to have been heightened by such *bona fide* deeds of the defendants. Further, the plaintiff's character is also questionable. He was alleged to have traded our nation's security defences to another country for self gratification. Such treasonable acts certainly do not warrant any award of aggravated damages.

False imprisonment is actionable per se; no actual damage needs to be proved. In deciding the quantum for this, the entire facts of this case must be considered. As stated previously, there is no malice on the part of the 2nd defendant in executing the extension detention order. It was done in good faith, and the error in the detention order, at most is caused by an oversight.

Immediately upon realising this, the extension order was cancelled and the plaintiff was set at liberty. Consider this against the grounds for the plaintiff's detention as disclosed in the initial detention order. He was accused of selling the country's secret and of attempting to recruit spies. These activities are certainly against national interest, and the plaintiff can be charged for high treason where the penalty, if found guilty is death. Because of an error in the procedure he was set free, much earlier than he would have. Instead of resting his good fortune, he chose to turn against the government claiming damages on a technical error. Such action is deplorable, and to display its utmost displeasure and revulsion towards the plaintiff's claim, this Court hereby awards a sum of RM1 as norminal damages to the plaintiff.

Further, there should also be no order as to costs and interest as claimed.

Reported by Cindy Chan